

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 9.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.14102 of 2012 and 33275 of 2014

P.Soundararajan ... Petitioner in both Writ Petitions

versus

The Principal Secretary/
Chairman & Managing Director,
SIPCOT Ltd.,
Chennai 600 008 ... Respondent in W.P.No.14102 of 2012

The Managing Director,
SIPCOT Ltd.,
Chennai 600 008 ... Respondent in W.P.No.33275 of 2014

W.P.No.14102 of 2012 filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.E3/Misc/30/2005 dated 7.5.2012 and quash the same.

W.P.No.33275/2014 filed under Art.226 of the Constitution of India praying for a Writ of Mandamus directing the respondent to forthwith reinstate the petitioner back to service as Assistant Executive Engineer, SIPCOT, pursuant to his acquittal in CrI.R.C.No.1378 of 2012 dated 28.10.2014.

For petitioner

Mr.C.Prakasam, in W.P.No.14102 of 2012

Mr.T.P.Senthil Kumar in
W.P.No.33275/2014

For respondent

Mrs.Sudharshana Sunder

COMMON ORDER

The petitioner was removed from the service of State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) on his conviction in C.C.No.23 of 2007, on the file of Judicial Magistrate, Ambattur. The order removing him from service is challenged in W.P.No.14102/2012. The petitioner was acquitted by

this Court by judgment dated 28 October 2014 in Crl.R.C.No.1378 of 2012. Subsequent events relating to his acquittal made the petitioner to file W.P.No.33275 of 2014, for issuing a direction to the management to reinstate him into service.

Brief backdrop :-

2. While the petitioner was working as Assistant Executive Engineer in SIPCOT, proceedings were initiated against him before the Judicial Magistrate, Ambattur, in C.C.No.23 of 2007 under Section 138 of the Negotiable Instruments Act. The Trial Court convicted the petitioner and sentenced him to undergo simple imprisonment for a period of six months. The judgment in C.C.No.23 of 2007 was taken up in appeal before the Sessions Judge, Poonamallee, in C.A.No.16 of 2012. During the currency of the criminal appeal, respondent issued notice to the petitioner in accordance with Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules read with rule 1.9 of SIPCOT Servants Rule as to why he should not be removed from service. The petitioner submitted his explanation. Thereafter, respondents passed the impugned order dated 7 May 2012, terminating him from service. The criminal appeal was dismissed. The petitioner challenged the judgment in C.C.No.23 of 2007 and the related judgment in C.A.No.16 of 2012, before this Court in Crl.R.C.No.1378 of 2012. The Criminal revision petition was allowed by this Court by judgment dated 28 October 2014. The petitioner submitted a representation on 10 November 2014 and 9 December 2014 requesting the respondent to cancel the order of removal from service on account of the judgment of acquittal in Crl.R.C.No.1378 of 2012. However, there was no action taken by the respondents.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

Discussion :-

4. The petitioner was involved in a criminal case initiated on the basis of a private complaint for an offence under Section 138 of Negotiable Instruments Act. The Trial Court convicted the petitioner and sentenced him to undergo simple imprisonment for a period of six months. The petitioner was directed to pay a sum of Rs.4 lakhs, being the cheque amount, to the complainant. The Trial Court Judgment was unsuccessfully challenged before the First Appellate Court.

5. The respondent having found that the petitioner was convicted by a criminal Court and conviction was not suspended, issued notice to him as to why his services should not be terminated. The petitioner replied that there was no privity of contract between him and the complainant and private complaint was a malafide action. The respondent, notwithstanding the said explanation, passed an order dated 7 May 2014, removing the petitioner from service.

6. The Criminal Revision in CrI.R.C.No.1378 of 2012, filed by the petitioner was allowed by this Court vide judgment dated 28 October 2014. The learned Judge directed refund of the fine amount to the petitioner. While allowing the Revision petition, the learned Judge indicated that it is open to the petitioner to work out his remedy against the order of removal, in accordance with law. The relevant observation reads thus :-

"By virtue of this order, the accused is entitled for all the relief in accordance with law. It is needless to mention that it is open for the accused to work out his remedy as against the order of removal passed by his employer on the basis of the judgment of conviction passed in this case, in accordance with law."

7. The Supreme Court in S.Bhaskar Reddy and another vs. Superintendent of Police and another, 2015 (2) SCC 365, indicated that in case it was an honourable acquittal and the dismissal was based on the criminal case, the punishment is liable to be set aside.

8. There is no dispute that the petitioner was removed from service only on account of his conviction by criminal Court. The respondent has not taken independent disciplinary proceedings against the petitioner alleging violation of the standing orders or provisions of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The Disciplinary Authority observed that the Appellate Court has merely suspended the sentence of imprisonment and not the conviction. It is therefore very clear that only on account of the conviction and sentence in C.C.No.23 of 2007, the petitioner was removed from service. The petitioner is the beneficiary of an order of honourable acquittal. When it is made out that removal from service was only on account of his conviction, necessarily, such order should be cancelled on account of the subsequent event, relating to his acquittal. This Court has given a clear finding in the order in criminal revision petition that the petitioner has not committed the offence in question. Such being the position, the petitioner is perfectly justified in his contention that the order removing him from service should be recalled.

Disposition :-

9. In the result, the impugned order dated 7 May 2014 is set aside on account of the judgment in CrI.R.C.No.1378 of 2012 dated 28 October 2014. A writ in the nature of a Writ of Mandamus is issued directing the respondent to reinstate the petitioner into service. It is made clear that the petitioner is not entitled to wages for the period in question. However, the said period also should be taken into account for other purposes and for counting the total service. The respondent is directed to pass a consequential order within a period of one week from the date of receipt or production of a copy of this order and reinstate the petitioner into service.

10. In the upshot, I allow the Writ Petitions. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary/
Chairman & Managing Director,
SIPCOT Ltd.,
Chennai 600 008

2. The Managing Director
Sipcot Ltd.,
Chennai-8

1 cc to Mr.C. Prakasam, Advocate, sr. 13318

1 cc to Mrs.Sudharsana Sundar, Advocate, sr. 13200

W.P.Nos.14102/2012 & 33275/2014

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